

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60697; File No. SR-FINRA-2009-052]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Adopt FINRA Rule 2264 (Margin Disclosure Statement) in the Consolidated FINRA Rulebook

September 21, 2009.

On July 29, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to adopt NASD Rule 2341 (Margin Disclosure Statement) with minor changes as FINRA Rule 2264 as part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> Notice of the proposal was published for comment in the **Federal Register** on August 11, 2009.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### I. Description of the Proposal

FINRA Rule 2264 requires members that open margin accounts for or on behalf of non-institutional customers<sup>5</sup>

to deliver to such customers, prior to or at the time of opening the account, a specified margin disclosure statement to highlight the risks involved in trading securities in a margin account. Members also must provide the margin disclosure statement (or an abbreviated version as provided by the rule) to non-institutional margin account customers not less than once a calendar year. The rule provides members with the flexibility to use an alternative disclosure statement to the language specified in the rule provided that the alternative disclosures are substantially similar to the disclosures specified in the rule. Members must deliver the initial and annual disclosure statement, in writing or electronically, to customers covered by the rule on an individual basis. In addition, the rule requires members that permit non-institutional customers to open accounts online, or engage in transactions in securities online, to post the margin disclosure statement on their Web sites in a clear and conspicuous manner.

FINRA stated that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

#### II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. These margin disclosures are important because they provide investors with information with which they can better understand the operation of margin accounts and the risks associated with margin trading.

#### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the

FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). *See Regulatory Notice* 08-25 (May 2008).

<sup>6</sup> In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

proposed rule change (SR-FINRA-2009-052) be, and hereby is, approved. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60686; File No. SR-BX-2009-041]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Eliminate Chapter V, Section 13 (Unusual Market Conditions) of the BOX Trading Rules and To Modify Related Rules

September 18, 2009.

On August 3, 2009, NASDAQ OMX BX, Inc. (the "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to eliminate Chapter V, Section 13 (Unusual Market Conditions) of the Trading Rules of the Boston Options Exchange Group, LLC ("BOX") and to modify related rules. The proposed rule change was published for comment in the **Federal Register** on August 18, 2009.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The proposed rule eliminates Chapter V, Section 13, as well as certain ancillary rules, which deal with fast markets.<sup>4</sup> Chapter V, Section 13 provides for an Options Official to determine that the level of trading activity or the existence of unusual

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> *See* Securities Exchange Act Release No. 60465 (August 10, 2009), 74 FR 41765 ("Notice").

<sup>4</sup> In addition to removing Chapter V, Section 13, the proposed rule change also removes certain rules related to fast markets. Specifically, the Exchange proposes to modify Chapter VI, Section 6(a) to remove a fast market rule exception to the general rule that all Market Maker bids or offers must be of a size of at least ten (10) contracts. The Exchange also proposes to: (1) Remove Section 6(c)(ii)(2) of Chapter VI to reflect the previously described removal of Chapter V, Section 13; (2) replace references to Rule 11Ac1-1 with Rule 602 of Regulation NMS under the Exchange Act; and (3) modify Section 9(b) (Trading Sessions) of Chapter XIV (Index Rules) by eliminating the declaration of a fast market as a factor in determining whether to delay the opening of the index options market.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> Exchange Act Release No. 60437 (Aug. 5, 2009), 74 FR 40256 (Aug. 11, 2009).

<sup>5</sup> For purposes of the rule, a non-institutional customer means a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). NASD rule 3110(c)(4) provides, "the term 'institutional account' shall mean the account of: (A) A bank, savings and loan association, insurance company, or registered investment company; (B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million."